HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

CR.APPEAL NO. 562 OF 1998

APPLICANTS

1. Pujeri Lal S/o. Tukuram Dhobi, aged 42 years.
2. Sadhuram S/o. Tukuram Dhobi, aged 30 years.
3. Sujan S/o. Tukuram Dhobi, aged 40 years
4. Ingalmati Bai Wd./o. Tukuram Dhobi, aged 60 years
5. Kumari W/o. Pujerilal Dhobi, aged 18 years
6. Sitiya Bai @ Kirhin W/o. Sujan Dhobi, aged 38 years
7. Hir Bai @ Medkonhin W/o. Pujeri Lal Dhobi, aged 40 years

All resident of Village Bade Katekoni, P.S. Dabhara, Distt. Bilaspur

Vs.

RESPONDENT

The State of Madhya Pradesh, through Police Station Dabhara, District Bilaspur MP now CG

26.07.2007

Shri H.S.Patel, counsel for the appellants.

Shri Pradeep Singh, P.L. for the State.

Heard.

(45)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The appellants have preferred this appeal under Section 374(2) of the Cr.P.C. against the judgment dated 17th of February 1998 passed in S.T. No. 80/97 whereby the learned Additional Sessions Judge, Sakti, District Bilaspur has convicted appellant No.2 Sadhu Ram under Section 307 of IPC separately for attempting to murder Mehttar & Bhisham Bai and sentenced him to undergo RI for five years and to pay a fine of Rs. 2,500/- for each attempt (total sentence 10 years and fine of Rs. 5,000/-), in default of payment of fine to further undergo RI for one year for each default and has also convicted all the appellants under Section 148 of IPC and sentenced them with imposing fine of Rs. 1000/- each, in the event of default one year RI.

Case of the prosecution, in brief, is that on 14.01.97 at about 12.00 hrs cow belonging to accused Pujeri was grazing in the kitchen garden of complainant Roop Sai, which was driven away by him. At that time accused persons came there, started abusing the complainant party and the quarrel started whereupon all the accused persons armed with lathi and axe assaulted the complainant party as a result of which Mehttar and Bhisham Bai sustained grievous injuries. One Koli Rawat and other villagers intervened. In the said incident apart

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

from Mehttar (P.W.-8) and Bhisham Bai (P.W.-9), Roop Sai (P.W.-5), Vidhya Bai (P.W.-10) & Dhul Sai (P.W.-13) had also sustained injuries. Report was lodged by P.W.-5 Roop Sai in the police station Dhabara on the basis of which offence was registered against the appellants under Sections 147,148,149,451,294,325 and 307 of the IPC. During investigation, injured persons were sent for medical examination where Dr. N.P.Mishra, P.W.-19 examined them. The injury report of Mehttar (P.W.-8) is Ex.P-25. This witness also sustained bony injury over his skull. Dr. S. Chatterjee, who was examined as P.W.-7, has given his report of Ex.P-19 according to which fracture was found on the right parietal bone of Mehttar. The injury report of Bhisham Bai (P.W.-9) is Ex. P-28 whereas injury report of Vidhya Bai (P.W.-10) is Ex.P-26 and that of Dhul Sai (P.W.-13) is Ex.P-27. After completing investigation charge sheet was filed. After committal charge under Sections 148 and 307 of the IPC and in the alternative under Section 326 of the IPC was framed for causing injury upon Mehttar apart from the charge under Sections 324 & 323 of the IPC was also framed against all the appellants. All the accused persons abjured their guilt. Prosecution in order to establish the charge against the accused persons examined 19 witnesses. Statement of accused was

(47)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

recorded in which the accused/appellants denied the circumstances appearing against them in the prosecution case. The accused/appellants also examined one Jamuna Bai in their defence.

Learned counsel for the appellants submits that in the said incident accused persons Pujeri Lal, Kumari, Sadhu Ram, Heer Bai and Soojan also sustained injuries and on the report of Pujeri Lal offence was registered against all the injured prosecution witnesses including two other witnesses under Section 307,452,147,148 and 149 of the IPC. However, the trial Court has acquitted the complainant party vide judgment dated 17th of February 1998 passed in ST No. 80/97. Learned counsel for the appellants submits that the injuries sustained by the victim Mehttar and Bhisham Bai was not sufficient to cause their death in the ordinary course and P.W.-7 Dr. S. Chaterjee who has proved the bony injury report of Mehttar has categorically stated that he is not in a position to opine at this stage that the injury on the person of Mehttar was sufficient to cause death in the ordinary course of nature. Evidence is available on record that the complainant and the accused parties were involved in physical scuffle and as a result of which they fell on ground and the doctor who has examined them has given the opinion that the injuries present over the head of

48

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

-5-

Bhisham Bai and Mehttar could be caused due to fall over some pointed stone. It is further argued that the complainant and the accused party had entered into a compromise in the lok adalat on the basis of which offence under Section 323 and 324 were compounded and the appellants faced trial only under Section 148 and 307 of the IPC as these offences are not compoundable under Section 320(2) of the Cr.P.C.

It is also argued that there is no evidence available on record that the accused persons were hospitalized as a result of injuries sustained by them and the only evidence available on record is that they had gone to district hospital, Bilaspur for the purposes of X-ray and they returned from Bilaspur after three days and there is no evidence of hospitalization.

On the other hand learned counsel for the State has supported the judgment of the trial Court.

I have heard counsel for the parties.

P.W.-19 Dr. N.P. Mishra has examined Mehttar and found incised wound in the size of 1"x 1/2 " x 1/2 " over right parietal region, incised wound on frontal area of right parietal region in the size of 2 1/2" x 1/2"x 1/2 ". He has further opined that possibility of fracture

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

beneath injuries and has referred for X-ray. His report is Ex.P-25. Similarly this witness has examined Bhisham Bai on the same day and has found incised wound over the skull in the size of 1 ½" x 1/2" x 1/8". Since Bhisham Bai was having symptoms of head injury she was admitted in the hospital and injury report of Bhisham Bai is Ex.P-29.

P.W.-7 Dr. S. Chatterjee has examined the X-ray plates of the skull of Mehttar and he has stated that Mehttar has suffered fracture on the right parietal region. However, on the X-ray examination of skull of Bhisham Bai no bony injury was found by the doctor. This witness in paragraph five of his deposition has stated that normally such injuries can not be caused due to fall on ground or stone however, in exceptional cases such injury may be caused due to fall on the ground. Whereas P.W.-19 Dr.N.P.Mishra has admitted that in the injury report of Ex.P-25, he has not mentioned this fact that the injury present over the person of Mehttar was sufficient to cause his death and has admitted that the injury present over him could be caused by fall over the pointed stone.

P.W.-8 Mehttar in paragraph 12 of his deposition has stated that he did not know whether crowd gathered after the incident. He has further admitted that at the time of incident and when others

150

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —1—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

were trying to separate he was involved in physical scuffle with the accused persons as a result of which he had fallen on the ground.

Bhisham Bai P.W.-9 has also deposed that at the time of incident, she along with the other injured persons were assaulted by all the accused persons who were holding lathi and axe as a result of injuries sustained by her, she had fallen unconscious. From the statement of the injured eye witnesses and particularly the statement of Bhisham Bai and Mehttar, participation of the accused persons in the crime in question is established as the defence has not been able to elicit anything which makes the statement of these witnesses untrustworthy or unreliable. The only question to be considered is as to whether the injuries sustained by Mehttar and Bhisham Bai was of such a nature which can lead to their death in the ordinary course in the absence of any treatment and whether accused appellant No.2 Sadhu Ram gave the blow with an intention to cause death of these two persons.

From the evidence of doctor though it is established that Mehttar sustained one bony injury over right parietal region but looking to the overall circumstances in which this offence took place it is very difficult to infer the motive of accused Sadhu Ram that he in

51

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

fact gave the blow to both the injured Mehttar and Bhisham Bai with an intention to cause their death. Even otherwise from the evidence available on record I do not find that these two witnesses were given treatment after hospitalization as there is no document available on record that the injured witnesses received treatment as indoor patient in the hospital as bed head ticket has not been adduced in the evidence.

In the light of the aforesaid discussions I am of the considered opinion that the Court below was not justified in holding appellant No.2 Sadhu Ram guilty of the offence under Section 307 of IPC for attempting to murder Mehttar and Bhisham Bai and the offence of the appellant Sadhu Ram falls under Section 325 of the IPC as he has caused grievous hurt to P.W.-8 Mehttar and Bhisham Bai.

In the result, the appeal preferred by appellants Pujeri Lal, Sujan, Ingalmati Bai, Kumari, Sitiya Bai @ Kirhin & Hir Bai @ Medkonhin against their conviction under Section 148 of the IPC is devoid of substance, the same is liable to be dismissed and it is hereby dismissed. However, the appeal of appellant No.2 Sadhuram is partly allowed. Conviction imposed upon him under Section 148 of IPC is maintained. However his conviction under Section 307 of the IPC

52

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

for attempting to murder Mehttar & Bhisham Bai and sentence imposed under that section is hereby set aside, instead thereof he is convicted under Section 325 of IPC. Taking into consideration the fact that the complainant and the accused persons had entered into a compromise during trial in the Lok Adalat, therefore offence under Sections 323 & 324 of IPC were compounded and they did not face trial in these sections and further considering that appellant No.2 has already undergone the sentence for a period of almost 2½ months during trial and thereafter approximately four months after the judgment was pronounced, he is sentenced to period already undergone. However, the fine sentence imposed on appellant No.2-Sadhuram by the trial Court is maintained.

Sd/-
DHIRENDRA MISHRA
Judge